FORM FOR USE IN APPLICATIONS

FOR HABEAS CORPUS UNDER 28 U.S.C. \$2254 C.

Miguel Angel Pina Barrienter	2008 JAN - 3 A 9: 25
Name / 245143	U.S. DISTRICT COUNT
Prison Number	MIDDLE DISTRICT ALA
Kilby ClF	
Place of Confinement	^
United States District Court Middle	District of Habama
Case No. QOBCVO9-WKW (To be supplied by Clerk of U. S. District Court)	· · · · · · · · · · · · · · · · · · ·
Migwel Angel Pina Barrientos (Full name) (Include name under which you were conve	, PETITIONER
(Name of Warden, Superintendent, Jailor, or authorishaving custody of Petitioner)	, RESPONDENT zed person
and	
THE ATTORNEY GENERAL OF THE STATE OF Troy Kin	ing.
	, ADDITIONAL RESPONDENT

(if petitioner is attacking a judgment which imposed a sentence to be served in the <u>future</u>, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the <u>future</u> under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

.(1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the $8-1/2 \times 11$ inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on $8-1/2 \times 11$ inch paper,

6.	(a) J	of trial: (Check one) ury () udge only ()
7.	Did ye	ou testify at the trial? Yes () No ()
8.	Did yo	ou appeal from the judgment of conviction? Yes (V) No ()
9.	(a) Na (b) Re (c) Da If you Suprem	and id appeal, answer the following: The second appeal or filed a petition for certiorari in the second appeals: Alabama Criming Court of Appeals Das offirmed.
10.	you pr	than a direct appeal from the judgment of conviction and sentence, have eviously filed any petitions, applications, or motions with respect s judgment in any court, state or federal? Yes () No ()
11.	(a)(1) (2)	r answer to 10 was "yes", give the following information: Name of court <u>Mobile Circuit Court</u> Nature of proceeding <u>Rule 32</u> . <u>Post Conviction</u> Grounds raised <u>Inefective Assistance of council</u> And and Jansdiction issues, unverified Compaint/Warrant.
	(5) (6) (b) As ma (1)	Did you receive an evidentiary hearing on your petition, application or motion? Yes () No () Result
	(3)	Grounds raised W/A
		Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()
		Result NA Date of result AA
	(0)	Date of result Mh

,		Nature of proceeding / N/A
	(3)	Grounds raised N/A
_		
	(4)	Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (
		Result
		Date of result N/A
(d)		d you appeal to the highest state court having jurisdiction the result any action taken on any petition, application or motion:
		First petition, etc. Yes () No ()
		Second petition, etc. Yes () No ()
		Third petition, etc. Yes () No ()
(e)	If	you did <u>not</u> appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12.

In order to proceed in the federal court, you must ordinarily first CAUTION: exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- 1 (b) Conviction obtained by use of coerced confession.
 - (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
 - (e) Conviction obtained by a violation of the privilege against self-incrimination.
 - (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
 - (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- * (i) Denial of effective assistance of counsel.
 - (j) Denial of right of appeal.

ì	ound one: Conniction obtained by plea of an'ity which was unlawfaus
	pporting FACTS (tell your story briefly without citing cases 84 Hickory w): Huy told me that if i confess that Hu drugs were my they would re
m	w): this told me that it i confess that the drugs were my they would re unife and my vehicle and account appropriate and income in the search
φ	ack and found nathing, searched the Notel room we had and found nothing
1	y browght dung doors and it did not even smell anything in the whicle, operan that mude the deal to the undercover ament was in his vehicle on
16	chang where in there possesion and in his home. Hey told me she (i
w	mild loose her job as a teacher and that they would make hard for me
e	and that they would push for the maximum if i did not take the dea
Ov	ud we would both be in jail.
Gr	ound two: Conviction obtained by use of coerced confession.
Su	pporting FACTS (tell your story briefly without citing cases or
	w): I was told that if I claimed and excepted the charge she fuite I would
	I free and that they would not press charges later, his words (agent) were 'no
-0,	
<u>-</u>	one would know she was here!
- 9 y	
- G y	
- '	
- 9 ,	
- 9 ₄	

He state	C. has not	Ground three: Conviction obtained by use of evidence obtained pursuant to an unlawfaul gree provided a full and fair heaving on the months of the Fourth Amendment claim
		Supporting FACTS (tell your story brieflywithout citing cases or law): Hey searched the motel room and the vehicle and us and layed
	•	nothing and they brought a drug day and it found nothing. Hey were tound in the possession of the person who sold them to the agent and in his apparament.
	D.	Ground four: <u>Denial</u> of effective assistance counsel.
		Supporting FACTS (tell your story briefly without citing cases of law): My. Homley failed to investigate the case and he failed to the part a proper defense (me also faile to reseach laws that releif could be given. failure to commissed-communicate, failed to contact mexicancons failed to provide a interpeter. Spanish speaking failed to explaine any rights imight have in a manner i could inderstand. I requested
		and also failed to asend time in course with me for the 14 manths i was on land i saw him i times about 15-30 minutes each. It in fact he was a lawyer with 30 yrs expensive on drug cases, i was not represented correctly and my love ones are the ones to pay the price. In my regenerated is no drug convictions or cases that would imply i was a drug dealer. I thouk you for your halp in this matter above all my family thanks you.
13.	sent	any of the grounds listed in 12A, B, C, and D were not previously preted in any other court, state or federal state briefly what grounds were so presented, and give your reasons for not presenting them:
	•	
14.	Do y	you have any petition or appeal now pending in any court, either state ederal, as to the judgment under attack? Yes () No ()
15.	the	the name and address, if known, of each attorney who represented you in following stages of the judgment attacked herein: At preliminary hearing Nell Hanley
		At arraignment and plea Mr. Brutfiewiez

	(c) At trial	
	(d) At sentencing Neil Hanley	_
. .	(e) On appeal Pro-Se	_
	(f) In any post-conviction proceeding アャゥーライ	_
	(g) On appeal from any adverse ruling in a post-conviction proceeding:	_
16.	Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes () No ()	
17.	Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?	
	Yes () No () (a) If so, give name and location of court which imposed sentence to be served in the future: NA	
	(b) And give date and length of sentence to be served in the future: N/A	
	(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes () No ()	_
whic	Wherefore, petitioner prays that the Court grant petitioner relief to he may be entitled in this proceeding.	
	Signature of Attorney (if any)	
fore	I declare (or certify, verify, or state) under penalty of perjury that the coing is true and correct. Executed on(date)	ıe
	Michael Angel Rina Signature of Vetitioner	

In The United States District Court For The Middle
District of Alabama
Miguel, Angel Pina Barrientos Petitioner, Case# CC-05-3007
State of Alabama Warden Holt et al. 2001 JAN -3 A 9:25 Request for Findentiary Heaving
Respondent, Motion To Proceed as "Next of Friend" and advocate for
Miguel Angel Piña Barrienton Abgod Nexican Citizen, inmate,
and Pro-Se Petitioner and Brief in suggest of,
Petition For Writ of Habeas Compus, pursuant 28 U.S.C. 2254

Comes now the Petitioner (Miguel Angel Pina Barrientos) before this Court through next of friend and moves the Court for Writ of Habeas Coppus. Kelief is sought due to unlawful incarseration. The Retitioner is actually innocent of the offense for which convicted and sentenced. Extreme Bias' and a prejudicial court attach as a result of illegal alien status". The Mobile County Atabama Circuit Court forced an unlawful conviction and sentence upon an individual incapable of understanding his rights. The facts follow;

Case History

- (A) Petitioner was arrested on 12-21-2004 and indicted on 8-26-2005 for Trafficking in Marijuana, 13A-12-231-(1) Code of Alabama (1975) amount in excess of a. 2 lbs. - less than 100 lbs.
- (B) Petitioner had no interpreter, contact with consulant general, or otherwise contact with any agency from his Mexican homeland or authorities.
- (C) Petitioner is innocent of the offense and was threatened, intimidated and coerced into pleading guilty. The lack of knowledge and understanding concerning knowingly, voluntarily, and intelligently pleading, prohibits this condiction.

The Petitioner lacks knowledge to enter an intelligent plea and a Voluntary, Knowingly plea to conform with Rule #14.4 A.R.C.P. There exist a culture difference and a severe language barrier in that, Petitioner is a Mexican citizen, educated in Mexico and limited in the English language.

(2) The understanding of English is limited.
(2) The understanding of Constitutional Rights is also limited.

(3) The comprehension of U.S. law is void.

(4) The ability to manufacture a competent defense with defense attorney was non-existent pursuant 6 th Amend. guarrant es.

The State of Alabama, Mabile County, failed to advise Petitioner of his rights under INS, regularling deportation and contacting representitives.

- (1) Petitioner was in this country illegally with his wife, picking up a paycheckard is guilty only of illegal entry. Alabama Police authorities forced a confession of ownership of drugs upon Petitioner to solve a crime that was in progress. In fact Petitioner and wife were victims of an overover zealous police department and prosecutor.
- 2) Petitioner was advised not to ask questions and to answer yes when prompted. Yelitioner was informed that if he refused to claim ownership of the drugs, that his wife would be continued to be held, prosecuted and sent to prison also. Petitioner's wife was also innocent and was informed that she would lose her job as a school teacher it convicted with her husband. The deal pressed by the folice and prosecutor was her release in exchange for this conviction.

The Hea was involuntary, pursuant Rule 14.4ARCP.

B) Petitioner was not informed in a manner he could comprehend the Constitutional Rights he would be relinquishing by pleading quitty. also, the Petitioner was not informed that an illegal alien had legal rights in Alabama and Mobile County. The state failed to determine that the plea was voluntary and not a result of force, threats, or coercion, nor of any promise apart from the plea agreement that has been disclosed to the court as provided in HiR.C.P. 14.3 (b). Having had rights read in English did not fullfill requirements of law reguarding colloquy of the trial judge, as the court was required to ascertain on each item of Rule 14.4 that the Judge Knew the Ktitioner understood said rights of Rule 14.4(a)XI) and (2). The requisites of Boykin V. Akabama, 395 U.S. 238, 23 L. Ed. 2d. 274, 89, S. ct 1709 (1969) were not met, quoting; A quity plea is only properly accepted upon satisfaction of the requisites of Boykin, including, the trial judges determination that the guilty plea was knowingly and voluntarily entered by the accused." The court could only have read rights and not ascertained understanding as language prevented the facts from being comprehended by Petitioner. The Petitioner has since learned what English necessary to constitute comprehension in prison, and knows that rights are afforded him in the higher Court, thus this retitioner is brought with help through next of friend and lifelong citizen of U.S.A. (Konnie H. Waldrep \$215713) The following is affidavit of Miguel Angel Pina Barrientos translated in English. On the night of December 21, 2004 these events took place.

Mase 2:08-cy-00009-WKW-CSC Document 1-2 Filed 01/03/2008 Page 4 of 9

on the night of the 21st of December, my wite and I drove to Mebile to pickup a check from "LVI environmental services "owed me for previous work from hurricare relief cleanup. Also, to collect 200.00 from a friend that was owed me from a I can of weeks before, (Brandon Cooper) So, I called him and I ask him it he had my money and he said he would have it later on, Since we arrived late in Mobile we had to wait because the company office was closed, so we vented a Motel. at Motel 6, while waiting for the key, at the window a black male approached me and asked if I wanted to buy ecstosy. I Said No and he assumed (since Iwas Hispanic) that I had drugs. We went to our room and staged there and Brandon called me and said he had my miney. He asked me where I was at, I told him I was at the Motel 6, he came over paid me and talked to that same black male, He asked me it I knewhim, I said No. they started talking about drugs, I went back to the room and told my wife to pack we were going to leave. Then we tamed in the Key and we left. We got in the vehicle and I saw Brandon's truck, so I thought I'd tell him I was bearing as I told my wife the same, when I went over to the truck he was talking to another black male, when I looked inside his truck he was giving Brandon money. Brandon gave him a back pack. I walked off and turned around, police came out from everywhere. They handcutted us, they searched our vehicle, they searched us (my wife and I), and the nom we stayed in They found nothing! and they brought in a drug day, the dog found nothing also! They started guestioning me and my wite. They saw she was terrified, also crying, so they started telling me to say the drugs were mine and they would let her go. After this, they searched Brandon's truck and found 3 pounds of marijaunia. They searched his apt. and found 16 more 1ts, and a gun. They forced me to sign a paper supposedly a statement saying I claimed the drugs, and theyreleased her, They gave her my vehicle, my personal property, my money, jewlry, and cell phone and booked me in Motile County Tail. I was never advised that I could contact the Mexican Counsel. There was No' interpreter. The next event was a plea agreement" which was a 10 yr split 3 yr sentence for an offense that I'm not guilty of.

My Commission Expires on: 12-15-2009 Notary: Contin M. Pruster Sworn to and subscribed before me on this date. December 30, 2007 Miguel Agel Pina Barrientos

Miguel Agel Pina Barrientos

Miguel Agel Pina Barrientos

Por llino 245743

Petitioner

BO. Box 150 Mt. Meigs Alo.
36057

I affirm the precoeding to be

true and correct to best of

my Knowledge.

Case 2:08 to hours Angel Pion Barrientes 7 845 age 19 years 20 pose frimos a Mobile a recozer en cheete que une com pania me denia y al regresar ibamos a comprer regalos de ravidad. y contacte a un amigo que yphabic conocido en mi tiempo em Mobil un muchiele que sellana Brandon Coper. Pues el no depia un dinero que le Kahia prestado una noche. Y me pregunto donde estable y le dije que cetabre en el Pueblo de Motril y el medizo que le hablera y el ibre para donde etakanos. I decidi rentar un cuarto pues era noche y la compania estaka ceroada. Olganos al Motelle 4 el ester esperando que me dieren la llaver, un hotabre april Americano ne grecio drogas 4 le dije que no despues sigio insistiendo y me pri al cuarto. Despues Brandon blego pues yo le hable y el viso me dio el dinero y hable con los hombres me pregentaron algo a mi y como no les entendi me pii y lo deje a el alli y le dije a Mi espora que nos Juliamos, al innos mine la troca de Brandon y me hourque para despedience de el y me asome y el hombre le dis dinero I el le dio una mochile y me fi trete de in pero de repente lleganon policias y me esposaron y tombién a mi esposa y me hicieur pregentes que no entendi bien pero me digieron que si no exceptiba los corgos, le iban a poner to Cargos a ella, y que ike a peader su trabaijo y su curera. pero que si yo decia que todo era mio y que yo lo trabatraje de Tx. La faroltakan y le dakan mi dinero y mi cellelar y la troca 4 les dije que si 4 la déjavoir in a mi me dievon 10/3 spens, 4 a les

ptros michellas volumentos por portunidad de defender me.

Tropico. minea me disson la grotunidad de defender me.

ni me comunicanos con mi pais.

Relief Sought

Petitioner envokes the authority of this Honorable U.S. District Court to Grant Relief of unputul incarseration by issuing the Writ of Habeas Corpus pursuant 28, 4,5,C, The Petitioner request this Court to notify the INS and appropriate authorities whereby, legal proceedings of deportation may take place. Furthermore, to Grant Habeas Corpus relief of transferring from Alabama Dept. of Corrections custody to the authorized Federal facility for transfer and deportation back to Mexico. Petitioner has a wife and children whom need him for support and stability. Voluntary Deportation should be within the realm of jurisdiction and the suspension of the remainder of this il legal sentence is in order. In the alternative to set a date for Evidentiary Hearing whereby, the Petitioner may be also appointed bilingual counsel to prove the actual innocence of a Mexican Citizen whom came to Mobile to pickup money owed him for clean-up work from Hurricane Relief (Ivan). The Court may overturn or suspend sentence and issue Order of Release in which case the Petitioner will be more than capable of arranging transportation to Mexico.

Certificate of

f Service

I certify that I have on this dute served a True and same copy of the foregoing upon the Clerk, United States District Court by placing in U.S. Mail pastage paid.

Office of The Clerk, United States District Court For The Middle District of Alabama P.O. Box 711 Montgomery Ala.

Pursuant 28 U.S.C and penalty
of perjury, I affirm the
foregoing to be true and correct

12-15-2009

My Commission Expires on:
Notary:

I hereby attest the above named appeared before me on this date Sworn to and subscribed before me on this date.

Miguel Angel Bing Barrien 4245743
Miguel Angel Bing Barrien 405
P.O. Box 150
Kilby C.F. Faith Dorm I-B-3
Mt. Meigs, Ala. 36057